

Submission to the United Nations Special Rapporteur on the Rights to
Freedom of Peaceful Assembly and of Association

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Call for papers:
**Assembly and Association Rights in the Context of
Natural Resource Exploitation**

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The Canada Tibet Committee is a federally-registered, non-governmental organization founded in 1987. Its mandate is to defend and promote the human rights and democratic freedoms of the Tibetan people.

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“We, the local Tibetans, are now powerless to stop the mining activities in our area... We appeal for help from anyone who cares about protecting the environment”

Local resident, speaking on condition of anonymity
Tsojang Tibetan Autonomous Prefecture
as told to Radio Free Asia, Jan 20, 2015¹

Introduction

The extraction of natural resources in Tibet is a contemporary circumstance in which the local population (marginalized stakeholders²) faces a daunting set of obstacles in the exercise of their rights to peaceful association and assembly (FOAA). Driven by demand for metals, energy and raw materials, and fueled by rapid growth and the large-scale construction of infrastructure³, China is now extracting mineral wealth on the Tibetan plateau that has previously not been financially feasible to mine⁴. Pitted against the power of state and corporate mining interests, local Tibetans have sought, unsuccessfully, to express concerns about the human rights violations associated with resource extraction and the environmental destruction that mining may bring such as heavy metal pollution⁵, contamination of drinking water, and the destruction of the native flora and fauna or of sites of cultural or sacred significance.

Defining “Tibet”

According to the Central Tibetan Administration, *“The Tibetan nationality lives in one contiguous area on the Tibetan plateau, which they have inhabited for millennia and to which they are therefore indigenous. For purposes of the constitutional principles of national regional autonomy Tibetans in the PRC in fact live as a single nationality all over the Tibetan plateau.”*⁶

¹ www.rfa.org/english/news/tibet/decry01202015150735.html?utm_source=twitterfeed&utm_medium=twitter

² For the purposes of this discussion, stakeholders are “groups ...of any size or aggregation that act at various levels...have a significant stake in a given set of resources, and can affect or be affected by resource management problems or interventions.” Chevalier, Jacques. “Stakeholder Analysis and Nat. Resource Management.” Carleton University, June 2001. <http://www1.worldbank.org/publicsector/politicaleconomy/November3Seminar/Stakeholder%20Readings/SA-Chevalier.pdf>

³ “Mining on the Tibetan plateau is crucial to the Communist Party’s plans for maintaining economic growth across China. Metals and minerals — including copper and gold, and the lithium used in batteries of electronic devices — are abundant across the region, and mining there has greatly expanded in recent years.” Wong, Edward. “Fatal Landslide Draws Attention to the Toll of Mining in Tibet” *New York Times* 2 April 2013

⁴ Lafitte, Gabriel. “Tibet’s Mining Menace” May 2011 Chinadialogue

<https://www.chinadialogue.net/article/show/single/en/4509-Tibet-s-mining-menace->

⁵ “Huang, X. et al. “Environmental Impact of mining activities on the surface water quality in Tibet: Gyama Valley” *Sci. Total Environ.* 2010 Sep 1;408 (19):4177-84.

⁶ Central Tibetan Administration, 2008, Memorandum on Genuine Autonomy for the Tibet People, <http://mwa.tibet.net/#/document/8>

The word “Tibet” is often used in exclusive reference to the Tibet Autonomous Region (TAR) of China although the TAR comprises only one part of historical Tibet which had three provinces or administrative regions. The Tibetan province of Kham is situated mostly in the western mountainous part of Sichuan and the northwestern tip of Yunnan, while the Tibetan province of Amdo accounts for most of Qinghai and a western part of Gansu. Outside the TAR, the historical Tibetan regions where Tibetans are concentrated have been designated as Tibetan Autonomous Prefectures in accordance with the minority nationality policy of the Government of China. Therefore, the TAR itself includes only about half of the total ethnic Tibetan populations in China and it does not include many of the regions of historical Tibet.⁷ For the purposes of this report, the word Tibet will be used in its broader sense and TAR will be used to indicate only central Tibet (the autonomous region).

Background: Mining in China

- Safety

By any measure—number of mining accidents per year, number of mining deaths per year, percentage of global mining accidents by country—mining in China is a risky business. In 2004, China accounted for 80% of the total deaths in coal mining accidents worldwide.⁸ Between 1997 and 2007, fatality statistics per year ranged from 4,746 to 6,995 deaths per year.⁹ From 2001 to 2010, there were “16,791 national non-coal mine accidents in total, and the death was [sic] of 21,251 people, which is the annual average of 1,679 in accidents, and 2,125 in people” (State Administration of Work safety, 2011).¹⁰ Grim as these statistics are, a chronic lack of accurate information (due to the government practice of concealing information about accidents coupled with the falsification of death counts, a practice of mine operators or owners who wish to avoid mine closures or fines), may in fact hide even higher actual accident and fatality rates.¹¹

- Miner Profile

Compensation in the coal mining industry is the second lowest of 49 industries in China. The majority of China’s miners are rural peasants with little education, who come from poverty stricken rural areas in search of paying labor in the mines.¹² This profile appears

⁷ *Poverty by Design: The Economics of Discrimination in Tibet*, Andrew Fisher, Canada Tibet Committee, 2002

⁸ Jianjun, Tu. “Safety Challenges in China’s Coal Mining Industry” Association for Asian Research 3/15/2006. <http://www.asianresearch.org/articles/2997.html>

⁹ Jianjun, Tu. “Coal Mining Safety: China’s Achilles Heel” *China Security* Vol 3, No 2 Spring 2007 (p. 36)

¹⁰ As cited in Yanhui, Zou et al. “On Protection of the Miner’s Right to Life and Right to Health” *Journal of Politics and Law*; Vol 7, No2: 2014.

¹¹ Jianjun, Tu. “Coal Mining Safety: China’s Achilles Heel” *China Security* Vol 3, No 2 Spring 2007 (p. 36)

¹² “...among China’s ...coal mines above 300k miners with middle school education [account] for 62% [of laborers] and...[workers with] advanced engineering and technical personnel [account] for 3% [of

to hold true in Tibet, with available evidence suggesting that most laborers working Tibetan mines are not Tibetan but Chinese brought in from outside the province.¹³ Despite claims that such practices are changing (in 2012 the state-owned China Daily reported that China Gold International Resources' Gyama mine in Tibet had hired "191 locals" and that non-Han employees made up 35% of the mine operator's staff), of the 83 victims who perished in the Gyama mine landslide on March 29, 2013, only two were Tibetan.¹⁴

Rights to Peaceful Assembly and Association in Practice

Although in 1998 China signed the International Covenant on Civil and Political Rights (ICCPR), its national legislature has yet to ratify the treaty.¹⁵ During its second cycle Universal Periodic Review, China rejected (did not accept) the recommendation made by numerous states that it ratify the Covenant.¹⁶

According to Chinese law, the citizens of China enjoy a right to peaceful assembly. Chapter Two, Article 35 of the Constitution of the People's Republic of China states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." It should be noted however, that Article 4 of China's Constitution, which purports to protect China's ethnic minorities, prohibits "any act which undermines the unity of the nationalities or instigates division". This effectively prohibits all acts of protest by Tibetans on the grounds of ethnicity.

Peaceful assembly in China always carries risk. A 2005 U.S. State Department Report notes that the Chinese government "severely restricted this right in practice... [and] that such activities may not 'challenge party leadership' or infringe upon the 'interests of the state...[and] prohibit protest against the political system or national leaders..."¹⁷ A recent example of China's de-facto intolerance of the right to assemble peacefully is its October 2014 declaration that the street occupation of "Occupy Central" (a pro-

employees]. Yanhui, Zou et al. "On Protection of the Miner's Right to Life and Right to Health" J. of Politics and Law; Vol 7, No2: 2014.

¹³ Many miners, as well as builders of infrastructure used to service the mines, are brought in from elsewhere in China...Managers at big state-owned firms are usually Han Chinese, who in turn tend to regard their own ethnic kin as easier to control and communicate with than Tibetans." "The Price of Gold" A Fatal Landslide in Tibet raises questions about a rush for the region's resources." *The Economist* 6 April 2013

¹⁴ Ibid. For details, see "Request for Review" submitted to Canada's OECD National Contact Point by the Canada Tibet Committee in January 2014 (appended).

¹⁵ Buckley, Chris. "Chinese Intellectuals Urge Ratifying Rights Treaty" *New York Times* 26 Feb. 2013

¹⁶ Summary Charts: China's Responses to Recommendations Advanced by Human Rights Council Member and Observer States, 2nd Universal Periodic Review of China, page 26, HRIC, February 2014. http://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf

¹⁷ US Dept. of State "China Country Report on Human Rights Practices for 2005" Released by the Bureau of Democracy, Human Rights and Labor, March 8, 2006.

democracy movement protesting China's handling of Hong Kong elections) was "illegal".¹⁸

As one scholar notes, the standard network of social and legal mechanisms (a free press, fair and accessible courts, the presumption of innocence, absence of lawyer/client privilege) that enables the observance, and protects the practice, of FOIA and other basic political rights, is not present in China.¹⁹ Lacking such fundamental institutions, China's ratification of the ICCPR would probably not produce much change in the status quo. Nonetheless, ratification would still impose obligations on China that would require it to grapple with its commitment to the rule of law; this alone would be a positive development in China's progress toward internationally accepted norms of basic human rights.²⁰

Specific Challenges to FOIA in Tibet

Intolerance of FOIA rights in Tibet is extensively documented. Human Rights Watch, in its 2014 World Report on China describes the use of force and violence in systematically suppressing "political, cultural, religious and socio-economic rights in Tibet..." and notes, among other practices, that arbitrary arrest and imprisonment remain "common", that torture and ill-treatment is "endemic" and that "Police systematically suppress any unauthorized gathering."²¹

Covering peaceful Tibetan protests in October 2013, Amnesty International decried China's tactics: "It is outrageous for the police to start firing on a peaceful gathering. This latest incident shows that Chinese authorities have done nothing to rein in excessive use of force by their security forces or to increase respect for Tibetans' right to freedom of peaceful assembly."²²

Although independent news coverage of Tibet is nearly virtually non-existent,²³ information that does trickle out suggests without exception, that Tibetans are denied the right to express any collective opinions or demonstrate with respect to mining. For example, a small sample of the available reports includes:

¹⁸ "Hong Kong's democracy debate" *BBC NEWS China*, 7 Oct. 7, 2014

¹⁹ Lee, Katie. "China and the International Covenant on Civil and Political Rights: Prospects and Challenges" *Chinese Journal of International Law* (2007) 6(2): 445-474.

²⁰ *Id.*

²¹ World Report 2014: China Human Rights Watch www.hrw.org/world-report/2014/country-chapters/china

²² "China: End 'outrageous' police violence against Tibetan Protesters." 9 October 2013. Amnesty International Annual Report 2013 <http://www.amnesty.org/en/news/china-end-outrageous-police-violence-against-tibetan-protesters-2013-10-09>.

²³ Fletcher, Chris. "Corporate Social Responsibility: A Legal Framework for Socioeconomic Development in Tibet" *Yale Human Rights & Dev. L.J.* Vol. XVII, 2014.

1. January 2015: An elderly Tibetan man appealing to Chinese central authorities to take action against mining in the Tibetan-populated region of Qinghai province was held in detention and Tibetan villager protests against the mining.²⁴
2. August 2014: Chinese Authorities in Phenpo County in central Tibet sentenced six Tibetans for jail terms of up to 12 years for protesting against a mining operation in Gyawodhong area In Phenpo County. The activists were punished for their roles in protesting against mining projects that were started in 2000, at the junction of two major rivers in the area.²⁵
3. July 2014: Police in Yunnan province, Dechen County, attacked and beat a group of Tibetan women who had gathered to protest copper mining on land considered sacred by residents of the area. The protest came after Chinese authorities dismissed repeated appeals by Tibetans to halt excavations in the copper mine operated near Mata village.²⁶
4. March 16, 2014: Hundreds of Tibetans in a county in China's Gansu province staged protests this week over the seizure of farm land for the construction of highways catering to state-linked gold mining and industrial activities that are polluting the environment and destroying livestock."²⁷
5. Sept 2013: More than 1,000 Tibetans gathered to protest against the mining activities in three sacred Buddhist sites in Dzatoe County. Following a tense confrontation between local Tibetan protestors and Chinese workers, Chinese security forces beat the protestors with gun butts and used tear gas to disperse the demonstration.²⁸
6. August 16, 2013: Chinese armed police beat and tear-gassed hundreds of Tibetans protesting illegal diamond mining activities in Gedrong area in Dzatoe County in Yushu Tibetan Autonomous Prefecture, Qinghai Province. Protestors

²⁴ "Tibetans Decry Pollution, Damage to Land from Chinese Mining" Jan 20, 2015, *Radio Free Asia*
<http://english.rfa.org/english/news/tibet/decry-01202015150735.html>

²⁵ "China jails six Tibetans over mining protest in Phenpo, Tibet" *The Tibet Post International* 4 August 2014 <http://www.thetibetpost.com/en/news/tibet/4153-china-jails-six-tibetans-over-mining-protest-in-phenpo-tibet>.

²⁶ Tibetan Women attacked, beaten at anti-mine rally" *Radio Free Asia* 7 July 2014
<http://www.refworld.org/docid/53c8d9b48.html>

²⁷ "Hundreds of Tibetans Protest Land Seizure Over Gold Mining Activities" 16 March 2014 *Radio Free Asia*. <http://www.rfa.org/english/news/tibet/protest-03222014220107.html>

²⁸ Choesang, Y. "Images show China continues its crackdown on Tibet mine Protest" 23 Sept. 2013 *The Tibet Post International*: <http://www.thetibetpost.com/en/news/tibet/3644-images-show-china-continues-its-crackdown-on-tibet-mine-protest>

were warned that continued demonstrations would result in arrest and imprisonment.²⁹

7. November 21, 2012: A father of three died after self-immolating at a gold mining site in Sangchu, County of Kanlho, TAR, Gansu Province. Tibetan residents had held past, peaceful protests calling on authorities to stop mining activities, but all efforts were to no avail.³⁰
8. November 22, 2010: Protestors demonstrating against exploitation of mineral resources in Shethongmon County in Shigatse, central Tibet were disrupted by riot police sent by the local government, and later stopped in their demonstration when a large contingent of public security forces and armed personnel were sent to crackdown on the protestors. A number of Tibetans were reported severely beaten and arrested.³¹

Summary of Challenges to FOAA in the Context of Mining in Tibet

Although China possesses a constitution in which FOAA are nominally granted, a multitude of cultural, political and economic factors combine to make the actual exercise of these rights virtually impossible. Some of the most basic reasons are described here.

The exercise of FOAA rights presupposes a basic level of access to adequate information about the activities of government and the corporations to which it grants mining rights. Tibet is essentially closed to the scrutiny of international media and requests to allow international monitoring missions are routinely denied.³² The lack of a free press in China, and the news blackout imposed in Tibet, makes it virtually impossible for Tibetans, or any other interested party, to obtain adequate information about the mining activities in their region.

Corruption throughout the mining industry impedes enforcement of regulations and/or consistency in the application of existing law. Corruption also impedes the ability of the government to apply environmental standards to mining activity.³³

²⁹ Choesang, Y. "Tibet Mine Protest Crackdown exposes China's 'nature reserve' Sham" 27 August 2013 *The Tibet Post International*: <http://www.thetibetpost.com/en/news/tibet/3593-tibet-mine-protest-crackdown-exposes-chinas-nature-reserve-sham>

³⁰ "Tibetan man dies of burning protest at a gold mining site" Tibetan Centre For Human Rights and Democracy 21 November 2012 <http://www.tchrd.org/2012/11/tibetan-man-dies-of-burning-protest-at-a-gold-mining-site/>

³¹ Dhardowa, YC. "Dozens Beaten, Arrested in Protests Over China's Mining in Tibet" 12 February 2011 *The Tibet Post International*. <http://www.thetibetpost.com/en/news/tibet/1450-dozens-beaten-arrested-in-protests-over-chinas-mining-in-tibet>

³² Fisher, M. "North Korea is more accessible to foreign journalists than Tibet is" 17 December 2013 *The Washington Post* <http://www.washingtonpost.com/blogs/worldviews/wp/2013/12/17/north-korea-is-more-accessible-to-foreign-journalists-than-tibet-is/>

³³ See generally Jianjun, Tu "Coal Mining Safety: China's Achilles Heel" *China Security* Vol 3, No 2 Spring 2007 (pp. 44-49)

Illegal as well as officially approved mines located in the Tibetan Plateau frequently operate outside of the minimal regulatory framework.³⁴

China's judiciary is not independent, at least as this notion is understood in democratic countries, nor is there a recognizable presumption of innocence. When their actions are suppressed, groups exercising FOAA rights have no recourse to a fair day in court.³⁵

As an ethnic minority, Tibetans experience a level of discrimination and marginalization in the TAR that further complicates and diminishes their ability to exercise FOAA rights. There appears to be no legal concept of responding with commensurate force. Thus, in multiple instances, state authorities respond to peaceful demonstrations in Tibet with violence: beatings, shootings, detention or imprisonment and torture.³⁶

Corrective Measures – confronting the double standard

As China continues its trajectory as a global economic player with a portfolio of far-flung international investments and a host of foreign corporations operating within its borders, it will increasingly be forced to reckon with international norms and expectations regarding civil and political rights. Signs of such a reckoning include China's recent step toward recognizing the concept of attorney-client privilege (heretofore non-existent), protecting lawyer-client confidential communications within the context of its Criminal Procedure Law.³⁷ A possible step to encourage more such measures could involve international exchanges and workshops in which these norms of civil and legal rights were experienced in practice, via mock trials, demonstrations and pre-trial procedures.

China's ratification of the ICCPR would be a tremendously important first step to take in moving towards a legal system in which civil and political rights are recognized, practiced and protected. Nonetheless, even if China ratifies the ICCPR, progress toward establishing FOAA rights will occur slowly, as the legal norms prerequisite to exercising these civil rights will not materialize without controversy.

³⁴ See "Illegal collieries closed on Qinghai-Tibet plateau" China Daily.com.cn http://www.chinadaily.com.cn/china/2014-12/08/content_19045732.htm

or, "Giant coal mine in violation of laws uncovered at the source of China's mother river" Green Peace East Asia 8 August 2014 <http://www.greenpeace.org/eastasia/press/releases/climate-energy/2014/red-wall-palace-in-qinghai/>

³⁵ "China suspects presumed guilty until proven innocent" Kaiman, Jonathan May 2013, The Guardian <http://www.theguardian.com/world/2013/may/20/china-courts-presume-guilty-wrongful-convictions>. See also Lee, Katie. "China and the International Covenant on Civil and Political Rights: Prospects and Challenges" Chinese Journal of International Law (2007) 6(2): 445-474.

³⁶ World Report 2014: China Human Rights Watch www.hrw.org/world-report/2014/country-chapters/china

³⁷ Article 46 of China's Criminal Procedure law, which establishes a lawyer's right "to keep confidential information of the client obtained during professional practice" came into effect Jan. 1, 2013. Legal Privilege Handbook 2013. DLA Piper, April 2013. www.dlapiper.com

The magnitude of change required within China prompts consideration of whether the other major force at work in natural resource extraction in Tibet—foreign corporations—could help promote the recognition of FOAA rights. One mechanism for holding multinational corporations to a set of international ‘best practices’ is the “Guidelines for Multinational Enterprises” (Guidelines), developed by the Organization for Economic Cooperation and Development (OECD). Originally promulgated in 2000, the Guidelines were recently updated in 2011 and currently have a membership of forty-two countries.³⁸ A central feature of the 2011 version is a chapter on human rights, which introduces a procedure to identify and address human rights abuses.³⁹

Notably, in 2014 the Government of China’s Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters recently adopted its own set of “Guidelines for Chinese Mining Companies Operating Abroad” that endorses a range of international human rights standards, including the OECD Guidelines.⁴⁰ Additionally, in October 2014, the Government of China signed a Memorandum of Understanding with the OECD “setting out the conditions for co-operation to promote the implementation by Chinese companies of responsible business conduct in global mineral supply chains.”⁴¹

Such steps are welcome measures, but are not to be taken seriously if they apply solely to China’s international operations. As this report suggests, mining operations in Tibet (and elsewhere in China) are in desperate need of such standards.

In a recent submission to Canada’s “National Contact Point” (NCP), which handles issues arising from alleged non-observance of the OECD Guidelines,⁴² the Canada Tibet Committee submitted a request for review regarding the operations of China Gold International Resources Corp. Ltd., (China Gold), a Canadian based gold and copper producer. A subject of the petition was the March 2013 land slide at the Gyama Copper Mine, owned and operated by China Gold in the Pulang Valley in Central Tibet, in which 83 miners perished. The request for review (submitted as an addendum with this paper) presented evidence that China Gold’s operations at the Gyama mine had violated multiple OECD Guideline provisions, including those aimed at ensuring proper environmental

³⁸ Santner, Ashely. “A Soft Law Mechanism for Corporate Responsibility: How the Updated OECD Guidelines for Multinational Enterprises Promote Business for the Future.”

<http://docs.law.gwu.edu/stdg/gwilr/PDFs/43-2/7-%20Santner.pdf>

³⁹ Ibid.

⁴⁰ Guidelines for Social Responsibility in Outbound Mining Investments, 2014

http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/CCCMC_Guidelines_for_Social_Responsibility_in_Outbound_Mining_Operations_English_Version.pdf

⁴¹ China and OECD to co-operate on promoting the responsible sourcing of minerals, October 24, 2014

<http://mneguidelines.oecd.org/china-oecd-cooperation-responsible-sourcing-of-minerals.htm>

⁴² OECD Guidelines for Multinational Enterprises, <http://mneguidelines.oecd.org/ncps/>

management, proper public health and safety measures and at respecting the human rights of those affected by the mining, including the rights to assembly and association.⁴³

Nevertheless, the adoption by China of human rights standards for its companies operating abroad opens up new opportunities for international advocacy aimed at improving conditions inside Tibet and across China more broadly. Suggestions include:

- that the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and to Association question the Government of China about a perceived double standard arising from its failure to apply human rights standards to companies operating domestically as well as to those operating outside of China;
- that OECD member governments, particularly those involved in bilateral human rights dialogues with China, leverage dialogue opportunities to press for domestic application of China's own Guidelines for "outbound mining investment";
- that the OECD itself make use of its Memorandum of Understanding with China to promote responsible mining in Tibet, and not only in the other countries where Chinese mining companies are active.

Conclusion

The challenges to exercising FOAA rights in Tibet are extreme. Obstacles include the absence of a legal and political system that recognizes such substantive rights, the widespread use of violence and force to suppress any such expression, the already tenuous and marginalized status of Tibetans as an ethnic minority, and corruption within various state institutions (police, local government, judiciary) that further corrode application of any human rights standards that may exist.

Without immediate and targeted efforts to correct this situation, the Tibetan people will remain the takers of distant policy decisions with little opportunity to present their views or express dissent. Until basic human rights including the rights to peaceful assembly and association are protected, the Tibetan people will be unable to influence the pace and design of natural resource extraction in line with their own economic, social and cultural interests.

⁴³ "Request for Review Submitted to Canada's National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises" available online at <http://www.tibet.ca/static/NCP.CGIR.jan2014.pdf> The Canadian NCP is currently examining the request.